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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1666

J. ROBERT HUIE, BOB MOORE, JR., AND K. C. EDWARDS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 1972. Petitions for rehearing were denied on June 5, 1972. The petition for a writ of certiorari was filed on June 21, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioners' activities were properly subject to prosecution under the federal mail fraud statute, 18 U.S.C. 1341.

2. Whether the searches and seizures in this case were lawful.

3. Whether the trial judge's instructions concerning Alabama divorce decrees were erroneous.

4. Whether in the circumstances of this case it was reversible error for the trial court to refuse to permit petitioner Edwards to testify whether he intended to defraud anyone.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Alabama, each petitioner was convicted of conspiracy to violate the federal mail fraud statute, 18 U.S.C. 1341 and 371. In addition, petitioners Huie and Edwards were convicted of six substantive violations of 18 U.S.C. 1341. Petitioner Moore was sentenced to three years' imprisonment and fined $10,000 (R.II 386).[1] Petitioners Huie and Edwards were each sentenced to a total of three years' imprisonment, to be followed by three years' probation. Petitioner Huie was also fined $10,000 (R.II 387-388). The court of appeals affirmed (Pet. App. A1-A18).

1. The indictment charged that petitioners conspired from about August 21, 1965, to August 20, 1970, to de-

[1] "R." refers to the record of proceedings, a copy of which is on file with the Clerk of this Court. The trial transcript is contained in Volumes III to VII and is separately paginated. "Tr." will be used to refer to the trial transcript.

vise a scheme to defraud various named individuals and to obtain money through false representations. It alleged that after the petitioners established contact with the named individuals (nonresidents of the State), they mailed forms to them from the office of Huie and Edwards to be executed for use in obtaining purported divorce decrees. They also mailed them instructions on the manner in which the forms should be executed, instructions to report to the office of Huie and Edwards, and representations concerning the alleged validity of any divorce decree obtained. They made false representations to the effect that any divorce obtained would be valid and would withstand attack in any court of the United States; that any such decree would be properly signed by an appropriate judicial official; and that upon payment of $465 the client would receive a certified copy of the divorce decree which had been properly signed, filed and recorded (R.I 2-4).

2. Under Alabama law in effect during the time here involved, a movant who was a *bona fide* resident of Alabama could obtain a divorce from a non-resident defendant. Moreover, although the movant was required to be a *bona fide* resident, there was no specified waiting period to establish his residency. As a result of this law, Alabama gained an increasing reputation as a "divorce mill" (See Pet. App. A3). In 1961, the Alabama State Bar and the Alabama Supreme Court adopted a rule providing for the disbarment of any attorney who secured a divorce for persons he had reasonable cause to believe were not bona fide residents

of Alabama (Pet. App. A3-A4). Disbarment proceedings had been instituted in 1964 against petitioner Moore, Circuit Judge for the Twenty-Fifth Judicial Circuit of Alabama, for his activities in granting more than 5,000 divorces to non-residents. The proceedings were enjoined, however, because the rule of ethics was held inapplicable to a sitting judge (Pet. App. A2). Petitioner Huie, who was involved in handling divorce cases with Moore (Tr. 346-348), was disbarred on March 3, 1967 (Tr. 1280).

Following Huie's disbarment, he worked out an arrangement with petitioner Edwards whereby Huie continued to procure divorce clients and Edwards signed the necessary papers as the attorney (Pet. App. A5; Tr. 604-605, 1284-1299). This arrangement (which was known to petitioner Moore) ended when Edwards was disbarred for his divorce activities on May 2, 1969 (Tr. 348-349, 1280). In anticipation of Edwards' disbarment, Edwards, Huie, Moore and one William Allison met at a motel and discussed the subject of divorces. Both Allison and Moore stated that the Alabama Constitution provided that any person could appear *pro se* in divorce proceedings (Tr. 1383-1384). Petitioners thereafter arranged to continue in business by having their clients sign all pleadings *pro se* (Tr. 634-636).

Numerous non-resident movants continued to call or write petitioners Huie or Edwards for legal assistance in obtaining an Alabama divorce (see, *e.g.*, Tr. 440-441, 463-464, 525-526, 588-589; see also, *e.g.*, Tr. 744-752, 822-832, 931-941, 1096-1103, 1136-1147). The petitioners would mail to the prospective divorcee a divorce "packet" containing instructions and papers to be

executed (see, *e.g.*, Tr. 441-442, 464-465, 487-488, 547-549, 589-590). The client would then bring these papers to Huie's and Edwards' office in Birmingham, Alabama. There the prospective divorcee would choose a ground for divorce, give some testimony before one of the secretaries,[2] talk to Huie or Edwards, sign the papers, pay the fee (usually $465) and then return home; the client would leave with assurances that he would be divorced soon thereafter and receive a certified copy of his filed, recorded divorce decree (see, *e.g.*, Tr. 442, 444-446, 452-453, 466-471, 499-503, 507, 509, 527-529, 532, 551-554, 556, 558-559, 590-592, 734, 805, 814, 847, 937, 1152, 1159).

After the client left the office, the "decree" was typed, Judge Moore's name was stamped or typed thereon, the court seal embossed, and the certification made through use of a rubber signature stamp and seal of Lois Brewer, Register in Chancery, which attested that the decree was on file and recorded in the records of the Winston County Circuit Court in Double Springs, Alabama (Tr. 606-607, 622-624, 1046, 1048-1049). The clients would then receive these "certified" copies by mail within a few days after leaving Alabama (see, *e.g.*, Tr. 449-450, 471, 491, 529, 592, 738, 791, 815, 887-888).[3] Although Judge Moore's signature appeared on these "certified" copies of the "decree," the original decrees were, in all cases, unsigned (see, *e.g.*, Tr. 552-

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[2] Two of the secretaries, Lawanda Woods and Annette Cox, were named as co-defendants. They entered pleas of nolo contendere and testified for the government.

[3] Several clients picked up their "certified" copies the day after their interviews (see, *e.g.*, Tr. 509, 558-559).

553, 615-617, 626-627, 645-646, 647-648, 923, 938, 940-941).

The original files prepared in the offices of Huie and Edwards were picked up two or three times a month and were carried by William Allison to Judge Moore at his office in Hamilton, Alabama (Tr. 1076-1080, 1083-1084). A search of Moore's office on August 14, 1970, revealed 2,765 divorce files.[4] Of these files, 2,684 had not been signed by petitioner Moore. Included in the files were divorce papers which had been prepared in the offices of Huie and Edwards in March 1967, April 1967, March 1968, December 1968, and various months in 1969 (see, *e.g.*, Tr. 370-373, 579-580, 729-730, 734, 912, 932). On January 13, 1971, Lois Brewer, Register in Chancery, searched her records at the request of a postal inspector and was unable to locate decrees corresponding to "certified" copies of "decrees" which clients of Huie and Edwards had received (see, *e.g.*, Tr. 449, 471, 491, 509, 558-559, 587, 592, 1217-1226).[5]

ARGUMENT

1. Petitioners contend that the federal mail fraud statute, 18 U.S.C. 1341, was inapplicable to their conduct here, because to apply that statute amounted to a direct interference in a matter—domestic relations—lying exclusively within the jurisdiction of the States (Pet. 13-21). The court of appeals thoroughly con-

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[4] Some of these files were in a safe in the Register's office. Judge Moore told the postal inspectors of the existence of these files and stated that, although they were not specified in the search warrant, he would voluntarily give them to the inspectors (Tr. 351).

[5] Brewer also testified that Judge Moore had directed her to stop reporting divorce matters to the Bureau of Vital Statistics (Tr. 1236-1237).

sidered this contention and properly rejected it (Pet. App. A7-A12).

As the court of appeals pointed out (Pet. App. A11-A12), the instant prosecution was not directly concerned with the validity of the divorces. Rather, petitioners were charged with devising a scheme to defraud by means of false representations (R.I 2-4). Clearly, the representations that "certified" copies of divorce decrees were being provided were false. Moreover, because of the doubtful residency of the parties, even had these decrees been declared by a judicial officer, their validity, as the court of appeals noted (Pet. App. A9), would have been questionable. See *Jennings v. Jennings,* 36 So. 2d 236 (Ala.). Petitioners' representation, however, was unqualified—that any divorce obtained would be valid without question. Such reckless indifference to the truth of the representation is sufficient to sustain a prosecution under the mail fraud statute. *Irwin* v. *United States,* 338 F. 2d 770 (C.A. 9), certiorari denied, 381 U.S. 911.

2. Petitioners also urge that the search of petitioner Moore's office on August 14, 1970, and the search of the office of Huie and Edwards on the same day, were invalid (Pet. 22-24, 26-28).

a. Petitioners assert without citation of authority that the seizure of files from Moore's office contravened the Tenth Amendment because it was a seizure of pending court files belonging to the State of Alabama (Pet. 22-23).[6] We do not accept this proposition as correct.

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[6] Neither Huie nor Edwards had standing to object to this search on this ground. See *Jones* v. *United States,* 362 U.S. 257. Assuming that Judge Moore had standing to object, he never moved to suppress these materials but requested only that they be

But in any event, instead of being filed as court records, these documents were being concealed in Judge Moore's office to hide petitioners' activities from the scrutiny of the State Bar. Some of the materials found in Judge Moore's office had been prepared in the office of Huie and Edwards more than three years previously and still had not been signed or found their way to the court records in the office of the Register. Certainly this search and seizure was no interference with Alabama's sovereignty.

b. Petitioners further contend that the supporting affidavits for the search warrant for the offices of Huie and Edwards[7] were insufficient to establish probable cause (Pet. 26-28).[8] This claim is insubstantial.

The affidavit of postal inspector Davis clearly sets forth that the object of the search was material being used in a scheme to defraud by use of the mails (R.I. 22-25). The affidavit of William Morrow, Jr., General Counsel of the Alabama State Bar, related that he had personal knowledge that both Huie and Edwards had been disbarred for their activities in securing Alabama divorces for non-residents (R.I. 26-33). The affidavit of Frank M. Bainbridge, Chairman of the Unauthorized Practice of Law Committee of the Birmingham Bar Association, related the operation of the scheme in

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returned or made available so that he could sign them (R. VIII Document No. 10).

[7] Petitioner Moore has no standing to contest this search.

[8] Petitioners' other claim in regard to this search—that the seizure of the files depended on a "judicial determination" of non-residency which the postal inspectors had no power to make (Pet. 23-24)—is frivolous.

detail, based on personal knowledge and complaints made to him by petitioners' "clients" (R.I. 34-45).

3. Petitioners also contend (Pet. 25) that the trial court's instructions withdrew from the jury the question of intent—that the court impermissibly decided a material issue of fact as a matter of law (Pet. 25-26).

The challenged instruction, however, merely told the jury that if they "[found] from the evidence" that a decree was not signed "and did not in some other way reflect that it was the decision of the court and was not filed or enrolled in the records of that court, then you would be justified in finding that such a decree was not a valid divorce decree." As the court below held (Pet. App. A12), this instruction did not amount to a directed verdict on the issue of intent; it merely stated legal principles[9] the jury was to apply in assessing the evidence. See *United States* v. *Friedman,* 445 F. 2d 1076 (C.A. 9), certiorari denied *sub nom. Jacobs* v. *United States,* 404 U.S. 958.

4. Petitioner Edwards submits that the trial court committed reversible error when it refused to allow him to testify that he did not intend to defraud anyone by his actions (Pet. 28-29). The court of appeals, while holding this refusal to be error, found such refusal to be "harmless" in the circumstances (Pet. App. A17-A18). In light of Edwards' testimony to the effect that he thought the pleadings were being properly filed (Tr. 1291-1292, 1298), that he would not have had anything

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[9] Petitioners assert that this statement of the law was incorrect. This issue of state law was contested in both courts below and does not merit review by this Court.

to do with the divorces had he known they were not being handled properly (Tr. 1298-1299) and that he never had an agreement to do anything other than obtain divorces in a legal manner (Tr. 1398-1399), we submit that the holding of the court below was correct.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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